



General Assembly

February Session, 2004

Substitute Bill No. 5611

* _____HB05611ENV____031604_____*

**AN ACT CONCERNING NOTIFICATION TO MUNICIPALITIES OF
CONTAMINATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-6u of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) For the purposes of this section:

4 (1) "Commissioner" means the Commissioner of Environmental
5 Protection, or his designee;

6 (2) "Parcel" means a piece, tract or lot of land, together with
7 buildings and other improvements situated thereon, a legal description
8 of which piece, parcel, tract or lot is contained in a deed or other
9 instrument of conveyance and which piece, tract or lot is not the
10 subject of an order or consent order of the commissioner which
11 involves requirements for investigation or reporting regarding
12 environmental contamination;

13 (3) "Person" means person, as defined in section 22a-2;

14 (4) "Pollution" means pollution, as defined in section 22a-423;

15 (5) "Release" means any discharge, uncontrolled loss, seepage,
16 filtration, leakage, injection, escape, dumping, pumping, pouring,

17 emitting, emptying or disposal of oil or petroleum or chemical liquids
18 or solids, liquid or gaseous products or hazardous wastes;

19 (6) "Residential activity" means any activity related to (A) a
20 residence or dwelling, including, but not limited to, a house,
21 apartment, or condominium, or (B) a school, hospital, day care center,
22 playground or outdoor recreational area;

23 (7) "Substance" means an element, compound or material which,
24 when added to air, water, soil or sediment, may alter the physical,
25 chemical, biological or other characteristics of such air, water, soil or
26 sediment;

27 (8) "Upgradient direction" means in the direction of an increase in
28 hydraulic head; and

29 (9) "Technical environmental professional" means an individual,
30 including, but not limited to, an environmental professional licensed
31 pursuant to section 22a-133v, as amended, who collects soil, water,
32 vapor or air samples for purposes of investigating and remediating
33 sources of pollution to soil or waters of the state and who may be
34 directly employed by, or retained as a consultant by, a public or
35 private employer.

36 (b) (1) If a technical environmental professional determines in the
37 course of investigating or remediating pollution after October 1, 1998,
38 which pollution is on or emanating from a parcel, that such pollution is
39 causing or has caused contamination of a public or private drinking
40 water well with a substance for which the Commissioner of
41 Environmental Protection has established a ground water protection
42 criterion in regulations adopted pursuant to section 22a-133k at a
43 concentration above the ground water protection criterion for such
44 substance, such professional shall notify his client and the owner of the
45 parcel, if the owner can reasonably be identified, not later than twenty-
46 four hours after determining that the contamination exists. If, seven
47 days after such determination, the owner of the subject parcel has not
48 notified the commissioner, the client of the professional shall notify the

49 commissioner. If the owner notifies the commissioner, the owner shall
50 provide documentation to the client of the professional which verifies
51 that the owner has notified the commissioner.

52 (2) The owner of a parcel on which exists a source of contamination
53 to soil or waters of the state shall notify the commissioner if such
54 owner becomes aware that such pollution is causing or has caused
55 contamination of a private or public drinking water well with a
56 substance for which the commissioner has established a ground water
57 protection criterion in regulations adopted pursuant to section 22a-
58 133k at a concentration at or above the ground water protection
59 criterion for such substance. Notice under this section shall be given to
60 the commissioner (A) orally, not later than one business day after such
61 person becomes aware that the contamination exists, and (B) in
62 writing, not later than five days after such oral notice.

63 (c) (1) If a technical environmental professional determines in the
64 course of investigating or remediating pollution after October 1, 1998,
65 which pollution is on or emanating from a parcel, that such pollution is
66 causing or has caused contamination of a public or private drinking
67 water well with: (A) A substance for which the commissioner has
68 established a ground water protection criterion in regulations adopted
69 pursuant to section 22a-133k at a concentration less than such ground
70 water protection criterion for such substance; or (B) any other
71 substance resulting from the release which is the subject of the
72 investigation or remediation, such professional shall notify his client
73 and the owner of the parcel, if the owner can reasonably be identified,
74 not later than seven days after determining that the contamination
75 exists.

76 (2) The owner of a parcel on which exists a source of pollution to
77 soil or the waters of the state shall notify the commissioner if such
78 owner becomes aware that such pollution is causing or has caused
79 contamination of a private or public drinking water well with: (A) A
80 substance for which the commissioner has established a ground water
81 protection criterion in regulations adopted pursuant to section 22a-

82 133k at a concentration less than such ground water protection
83 criterion for such substance; or (B) any other substance which was part
84 of the release which caused such pollution. Notice under this
85 subdivision shall be given in writing not later than seven days after the
86 time such person becomes aware that the contamination exists.

87 (d) (1) If a technical environmental professional determines in the
88 course of investigating or remediating pollution after October 1, 1998,
89 which pollution is on or emanating from a parcel, that such pollution
90 of soil within two feet of the ground surface contains a substance,
91 except for total petroleum hydrocarbon, at a concentration at or above
92 thirty times the industrial/commercial direct exposure criterion for
93 such substance if the parcel is in industrial or commercial use, or the
94 residential direct exposure criterion if the parcel is in residential use,
95 which criteria are specified in regulations adopted pursuant to section
96 22a-133k, such professional shall notify his client and the owner of the
97 parcel, if such owner is reasonably identified, not later than seven days
98 after determining that the contamination exists, except that notice will
99 not be required if the land-use of such parcel is not residential activity
100 and the substance is one of the following: Acetone, 2-butanone,
101 chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,1-
102 dichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene,
103 ethylbenzene, methyl-tert-butyl-ether, methyl isobutyl ketone, styrene,
104 toluene, 1,1,1-trichloroethane, xylenes, acenaphthylene, anthracene,
105 butyl benzyl phthalate, 2-chlorophenol, di-n-butyl phthalate, di-n-octyl
106 phthalate, 2,4-dichlorophenol, fluoranthene, fluorene, naphthalene,
107 phenanthrene, phenol and pyrene.

108 (2) The owner of the subject parcel, shall notify the commissioner in
109 writing not later than ninety days after the time such owner becomes
110 aware that the contamination exists except that notification will not be
111 required if not later than ninety days: (A) The contaminated soil is
112 remediated in accordance with regulations adopted pursuant to
113 section 22a-133k; (B) the contaminated soil is inaccessible soil as that
114 term is defined in regulations adopted pursuant to section 22a-133k; or
115 (C) the contaminated soil which exceeds thirty times such criterion is

116 treated or disposed of in accordance with all applicable laws and
117 regulations.

118 (e) (1) If a technical environmental professional determines in the
119 course of investigating or remediating pollution after October 1, 1998,
120 which pollution is on or emanating from a parcel, that such pollution is
121 causing or has caused ground water within fifteen feet beneath an
122 industrial or commercial building to be contaminated with a volatile
123 organic substance at a concentration at or above thirty times the
124 industrial/commercial volatilization criterion for ground water for
125 such substance or, if such contamination is beneath a residential
126 building, at a concentration at or above thirty times the residential
127 volatilization criterion, which criteria are specified in regulations
128 adopted pursuant to section 22a-133k, such professional shall, not later
129 than seven days after determining that the contamination exists, notify
130 his client and the owner of the subject parcel, if such owner can
131 reasonably be identified.

132 (2) The owner of such parcel shall notify the commissioner in
133 writing not later than thirty days after such person becomes aware that
134 the contamination exists except that notification is not required if: (A)
135 The concentration of such substance in the soil vapor beneath such
136 building is at or below thirty times the soil vapor volatilization
137 criterion, appropriate for the land-use for the parcel, for such
138 substance as specified in regulations adopted pursuant to section 22a-
139 133k; (B) the concentration of such substance in groundwater is below
140 thirty times a site-specific volatilization criterion for ground water for
141 such substance calculated in accordance with regulations adopted
142 pursuant to section 22a-133k; (C) ground water volatilization criterion,
143 appropriate for the land-use of the parcel, for such substance specified
144 in regulations adopted pursuant to section 22a-133k is fifty thousand
145 parts per billion; or (D) not later than thirty days after the time such
146 person becomes aware that the contamination exists, an indoor air
147 monitoring program is initiated in accordance with subdivision (3) of
148 this subsection.

149 (3) An indoor air quality monitoring program for the purposes of
150 this subsection shall consist of sampling of indoor air once every two
151 months for a duration of not less than one year, sampling of indoor air
152 immediately overlying such contaminated ground water, and analysis
153 of air samples for any volatile organic substance which exceeded thirty
154 times the volatilization criterion as specified in or calculated in
155 accordance with regulations adopted pursuant to section 22a-133k. The
156 owner of the subject parcel shall notify the commissioner if: (A) The
157 concentration in any indoor air sample exceeds thirty times the target
158 indoor air concentration, appropriate for the land-use of the parcel, as
159 specified in regulations adopted pursuant to section 22a-133k; or (B)
160 the indoor air monitoring program is not conducted in accordance
161 with this subdivision. Notice shall be given to the commissioner in
162 writing not later than seven days after the time such person becomes
163 aware that such a condition exists.

164 (f) (1) If a technical environmental professional determines in the
165 course of investigating or remediating pollution after October 1, 1998,
166 which pollution is on or emanating from a parcel, that such pollution is
167 causing or has caused contamination of ground water which is
168 discharging to surface water and such ground water is contaminated
169 with a substance for which an acute aquatic life criterion is listed in
170 appendix D of the most recent water quality standards adopted by the
171 commissioner at a concentration which exceeds ten times (A) such
172 criterion for such substance in said appendix D, or (B) such criterion
173 for such substance times a site specific dilution factor calculated in
174 accordance with regulations adopted pursuant to section 22a-133k,
175 such professional shall notify his client and the owner of such parcel, if
176 such owner can reasonably be identified, not later than seven days
177 after determining that the contamination exists.

178 (2) The owner of such parcel shall notify the commissioner in
179 writing not later than seven days after the time such person becomes
180 aware that the contamination exists except that notice shall not be
181 required if such person knows that the polluted discharge at that
182 concentration has been reported to the commissioner in writing within

183 the preceding year.

184 (g) (1) If a technical environmental professional determines in the
185 course of investigating or remediating pollution after October 1, 1998,
186 which pollution is on or emanating from a parcel, that such pollution is
187 causing or has caused contamination of ground water within five
188 hundred feet in an upgradient direction of a private or public drinking
189 water well which ground water is contaminated with a substance
190 resulting from a release for which the commissioner has established a
191 ground water protection criterion in regulations adopted pursuant to
192 section 22a-133k at a concentration at or above the ground water
193 protection criterion for such substance, such technical environmental
194 professional shall notify his client and the owner of the subject parcel,
195 if such owner can reasonably be identified, not later than seven days
196 after determining that the contamination exists.

197 (2) The owner of the subject parcel shall notify the commissioner in
198 writing not later than seven days after the time such owner becomes
199 aware that the contamination exists.

200 (h) (1) If a technical environmental professional determines in the
201 course of investigating or remediating pollution after October 1, 1998,
202 which pollution is on or emanating from a parcel, that such pollution is
203 causing or has caused polluted vapors emanating from polluted soil,
204 groundwater or free product which vapors are migrating into
205 structures or utility conduits and which vapors pose an explosion
206 hazard, such technical environmental professional shall immediately
207 notify his client and the owner of the subject parcel, if such owner can
208 reasonably be identified, not later than twenty-four hours after
209 determining that the vapor condition exists. If the owner of such parcel
210 fails to notify the commissioner in accordance with this subsection,
211 such client shall notify the commissioner. If the owner notifies the
212 commissioner, the owner shall provide documentation to the client of
213 the professional which verifies that the owner has notified the
214 commissioner.

215 (2) The owner of such parcel shall orally notify the commissioner
216 and the local fire department immediately and under all circumstances
217 not later than two hours after the time a technical environmental
218 professional notifies the owner that the vapor condition exists, and
219 shall notify the commissioner in writing not later than five days after
220 such oral notice.

221 (i) All notices, oral or written, provided under this section shall
222 include the nature of the contamination or condition, the address of the
223 property where the contamination or condition is located, the location
224 of such contamination or condition, any property known to be affected
225 by such contamination or condition, any steps being taken to abate,
226 remediate or monitor such contamination or condition, and the name
227 and address of the person making such notification. Written
228 notification shall be clearly marked as notification required by this
229 section and shall be either personally delivered to the Water
230 Management Bureau of the Department of Environmental Protection
231 or sent certified mail, return receipt requested, to the Water
232 Management Bureau of the Department of Environmental Protection.

233 (j) The commissioner shall provide written acknowledgment of
234 receipt of a written notice pursuant to this section not later than ten
235 days of receipt of such notice. Such acknowledgment shall be
236 accompanied by (1) a statement that the owner of the parcel has up to
237 ninety days within which to submit to the commissioner a plan to
238 remediate or abate the contamination or condition. If such plan is not
239 submitted or is not approved by the commissioner, the commissioner
240 shall prescribe the action to be taken, or (2) a directive as to action
241 required to remediate or abate the contamination or condition. If a
242 plan is submitted which details actions to be taken, or a report is
243 submitted which details actions taken, to mitigate the contamination or
244 conditions such that notice under this section would not be required,
245 and such plan or report is acceptable to the commissioner, the
246 commissioner shall approve such plan or report in writing. When
247 actions implementing an approved plan are completed, the
248 commissioner shall issue a certificate of compliance.

249 (k) Not later than five days after an owner submits any written
250 notice to the commissioner under this section, such owner shall post
251 such notice in a conspicuous place on the subject property, and, in the
252 case of a place of business, in a conspicuous place inside the place of
253 business. An owner who violates this subsection shall pay a civil
254 penalty of one hundred dollars for each offense. Each violation shall be
255 a separate and distinct offense and, in the case of a continuing
256 violation, each day's continuance thereof shall be deemed to be a
257 separate and distinct offense. The Attorney General, upon complaint of
258 the commissioner, shall institute an action in superior court for the
259 judicial district of Hartford to recover such penalty.

260 (l) Not later than five days after receipt of any written notice
261 received under this section, the commissioner shall forward a copy of
262 such notice to (1) the chief elected official of the municipality in which
263 the subject pollution was discovered by the technical environmental
264 professional, and (2) in the case of a place of business, (A) the Labor
265 Commissioner where the Division of Occupational Safety and Health
266 within the Labor Department has jurisdiction over the employers,
267 employees and places of employment on the subject property, and (B)
268 the office of any collective-bargaining representatives of workers at the
269 subject property.

270 ~~[(k)]~~ (m) Nothing in this section and no action taken by any person
271 pursuant to this section shall affect the commissioner's authority under
272 any other statute or regulation.

273 ~~[(l)]~~ (n) Nothing in this section shall excuse a person from
274 complying with the requirements of any statute or regulation except
275 the commissioner may waive the requirements of the regulations
276 adopted under section 22a-133k if he determines that it is necessary to
277 ensure that timely and appropriate action is taken to mitigate or
278 minimize any of the conditions described in subsections (b) to (h),
279 inclusive, of this section.

This act shall take effect as follows:
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Section 1	<i>October 1, 2004</i>
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ENV *Joint Favorable Subst.*